of the fixed requirement that the record must be kept in discharge of official duty, and it is submitted that the limitation is not a desirable one. In the United States it has never been definitely accepted. See WIGMORE, EVIDENCE, § 1634. But the second objection taken by the court, that the records were only for a temporary purpose and not of a permanent character, is valid, and on this point the principal case may be supported. *Hegler* v. *Faulkner*, 153 U. S. 109. In the United States, post-office records have been generally considered within the public document exception. *Gurney* v. *Howe*, 9 Gray (Mass.) 404. But the records admitted are kept by the direction of the Post-Office Department and the postmaster is bound to see that they are correct and to certify the facts to the Department. See *Miller* v. *Boykin*, 70 Ala. 469, 478. The records in the principal case would perhaps be more properly admissible under the entry in the course of business exception to the hearsay rule. But failure to account for the absence of the entrant is conclusive against this possibility. See WIGMORE, EVIDENCE, § 1521.

EXECUTORS AND ADMINISTRATORS — ADMINISTRATION — INDEBTEDNESS OF HEIR TO ESTATE AS LIEN ON HIS SHARE OF THE REALTY. — An heir owed the estate more than the value of his distributive share of the real estate. After the Probate Court had refused the indebted heir participation in the distribution thereof, judgment creditors of this heir levied on his alleged interest in the realty. The other heirs brought a bill in equity for a decree to quiet their title to such real estate, free from any lien on the part of the judgment creditors. *Held*, that the relief should be granted. *Stenson* v. *Halvorson*, 147 N. W. 800 (N. D.).

It is considered that the indebtedness constitutes a prior equitable lien upon the debtor's distributive share of the real estate. Admittedly personal property, which vested in the administrator, could be charged with a distributee's indebtedness, but at common law the rule was clearly otherwise as to realty, which passed directly to the heir free of all charges. See *Smith* v. *Kearney*, 2 Barb. Ch. (N. Y.) 533, 547; 9 HARV. L. REV. 157. But under modern statutes, such as that in the principal case, which treat real and personal property alike, as descendible subject to administration, many courts have stretched a point to allow the administrator to withhold real estate from an indebted heir. *Streety* v. *McCurdy*, 104 Ala. 493, 16 So. 686; *Oxsheer* v. *Nave*, 90 Tex. 568, 40 S. W. 7. This result is not without vigorous dissent. *Marvin* v. *Bowlby* 142 Mich. 245, 105 N. W. 751; *La Foy* v. *La Foy*, 43 N. J. Eq. 206, 10 Atl. 266. Some courts distinguish between real estate and surplus proceeds in administrator's hands from the sale thereof. *Fiscus* v. *Moore*, 121 Ind. 547, 23 N. E. 362. This distinction is probably unsound, for such funds are not personal assets, but in equity are still realty, subject to the lien of judgment creditors of the heir. *Cf. Simonds* v. *Harris*, 92 Ind. 505. See *Streety* v. *McCurdy*, *supra*, 687. The principal case reaches an equitable and practical result, and agrees with the modern tendency to abolish the artificial difference in the administration of intestate real and personal property.

FIXTURES — REMOVAL — EFFECT OF NEW LEASE ON TENANT'S RIGHT OF REMOVAL. — A tenant in possession installed agricultural fixtures with the understanding that he should have the right to remove them. Subsequently he took out a new lease, which described the premises in general terms and reserved no right to remove the articles affixed. There was in addition a covenant to yield up the premises in as good repair as when taken. The landlord now sues the tenant for removing the fixtures. *Held*, that he cannot recover. *Sassen* v. *Haegle*, 147 N. W. 445 (Minn.).

The court speaks as though the fixtures remained personalty. Grant this, and tenant's right of removal is unquestionable. Probably, however, the court

only confuses the nature of the tenant's right, which is historically a privilege of severance from the realty that the law has come to allow tenants during their terms. This confusion is frequently made. *Kerr* v. *Kingsbury*, 39 Mich. 150. Considering the fixtures, then, as realty, the present weight of authority holds that the tenant, by accepting a new lease without reserving his right of removal, conclusively indicates his intention to abandon that right and treat the fixtures as an inseparable part of the premises newly demised. *Carlin* v. *Ritler*, 68 Ind. 418, 13 Atl. 370; *Watriss* v. *First Bank of Cambridge*, 124 Mass. 571; *Sanitary District* v. *Cook*, 169 Ill. 184, 48 N. E. 461. But the obvious hardship of this doctrine has led many courts to repudiate it altogether, or to whittle down the scope of its operation. *Kerr* v. *Kingsbury*, *supra*; *Second National Bank* v. *Merrill*, 69 Wis. 501. Cf. *Red Diamond Clothing Co.* v. *Steidemann*, 169 Mo. App. 306, 152 S. W. 609. *Bernheimer* v. *Adams*, 70 N. Y. App. Div. 114. See 15 HARV. L. REV. 853. Moreover, the doctrine is never applied in the analogous case of a tenant holding over by mere informal agreement. *Crandall Investment Co.* v. *Ulyatt*, 40 Col. 35. As the right of severance during the original term depended upon no stipulation in the lease, the majority rule is peculiarly deceptive. The juster test is one of intention, deduced by interpreting the lease in the light of all the circumstances — not merely inferred from the isolated fact that tenant technically "delivered up possession" under the old tenancy without reserving his right of severance. *Wright* v. *MacDonnell*, 88 Tex. 140, 30 S. W. 907.

HUSBAND AND WIFE — RIGHTS OF WIFE AGAINST HUSBAND — WIFE'S RIGHT TO SUE HUSBAND FOR PERSONAL TORTS. — A wife sued her husband for assault and battery under a statute providing that married women shall retain the same legal existence and legal personality after marriage as before marriage. *Held*, that the wife can recover. *Fiedeer* v. *Fiedeer*, 140 Pac. 1022 (Okla.).

A wife sued her husband for assault, battery and false imprisonment under a statute placing husband and wife on separate bases with respect to their property. *Held*, that the wife can recover. *Brown* v. *Brown*, 89 Atl. 889 (Conn.).

At common law the unity of husband and wife prevented either from maintaining an action against the other. *Phillips* v. *Barnet*, L. R. 1 Q. B. D. 436. See STEWART, HUSBAND AND WIFE, § 48. Even under married woman's acts the tendency has been to deny wives the right to sue their husbands for personal injuries on the ground that the statutes do not make this change in the common law specifically and so cannot be presumed to have intended it. *Freethy* v. *Freethy*, 42 Barb. (N. Y.) 641; *Thompson* v. *Thompson*, 218 U. S. 611; *Schultz* v. *Schultz*, 89 N. Y. 644, overruling *Schultz* v. *Schultz*, 27 Hun (N. Y.) 26. A supposed public policy against aggravating domestic troubles by bringing them into the public courtroom, has been partly responsible for this narrow interpretation of the statutes. *Longendyke* v. *Longendyke*, 44 Barb. (N. Y.) 366. Strangely enough, however, actions between husband and wife for torts to property seem generally to be permitted. *Smith* v. *Smith*, 20 R. I. 556, 40 Atl. 417; *Mason* v. *Mason*, 66 Hun (N. Y.) 386, 21 N. Y. Supp. 306; *Carpenter* v. *Carpenter*, 154 Mich. 100, 117 N. W. 598. At present a change seems to be taking place in the law. Courts deprecate the fact that they are bound by authority to the earlier rule. See *Abbe* v. *Abbe*, 22 App. Div. (N. Y.) 483, 48 N. Y. Supp. 25; *Sykes* v. *Speer*, 112 S. W. 422 (Tex. Civ. App.). The principal cases represent the latest view, namely, that these statutes amount to fundamental legislation changing the status of married women completely and that the right to maintain actions against their husbands for torts is simply a logical consequence of this new status. Against the adoption of this broader interpretation, the decisions find no public policy,